Filed 10/27/09 In re S.H. CA1/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re S.H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. S.H., Defendant and Appellant.	A114529 (Contra Costa County Super. Ct. No. J05-01557)

S.H. entered a plea of no contest to a Welfare and Institutions Code section 602 petition[1] alleging one count of alcohol related reckless driving in violation of Vehicle Code sections 23103 and 23103.5. His counsel has filed a brief raising no issues and asks this court to conduct an independent review of the record to identify any issues that could result in reversal or modification of the judgment if resolved in defendant's favor. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436; see *Smith v. Robbins* (2000) 528 U.S. 259.) Counsel declares she notified defendant he could file a supplemental brief raising any issues he wishes to call to this court's attention. No supplemental brief has been filed.

Upon independent review of the record, we find no arguable issues are presented for review and affirm.

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

FACTUAL AND PROCEDURAL HISTORY

The section 602 petition alleged one count of misdemeanor driving under the influence of alcohol or drugs and one count of driving with a blood-alcohol level exceeding .08 percent. (Veh. Code, § 23152, subds. (a)-(b).)

At the contested jurisdictional hearing, Officer Steve Christ testified that, on July 30, 2005, he was dispatched to the scene of a single vehicle accident. When he arrived, he saw a parked Mitsubishi Eclipse with significant front-end damage. Five people, including defendant, were standing near the vehicle. Defendant told Officer Christ he swerved to avoid an animal and crashed into a tree. Officer Christ observed objective signs of intoxication, including red watery eyes, and slurred speech. He also detected the smell of an alcoholic beverage on defendant's breath. Defendant failed several field sobriety tests, and when Officer Christ asked him to blow into a handheld Preliminary Alcohol Screener, the device detected the presence of alcohol. Officer Christ gave defendant the choice of a blood or breath test, and defendant chose the blood test.

The court admitted the blood sample into evidence, and initially admitted a supporting declaration of the person who drew the blood over defendant's Evidence Code section 712 objection. It was stipulated that an expert in forensic alcohol analysis tested the blood sample, and the results were that it contained a .09 percent blood-alcohol level. It was also stipulated that defendant's father was the registered owner of the Mitsubishi Eclipse.

Defendant's father testified as follows: Defendant had his permission to drive the vehicle, and defendant told him he had been driving at the time of the accident. After defendant was taken to the police station, the tow truck driver looked for the keys to the car, but no one at the scene had them. Defendant's father assumed defendant had the keys and went to the police station to try to retrieve them, but was told he would have to wait until defendant was released. They never got the car back, and he did not recall ever seeing the keys again.

Defense counsel moved to dismiss pursuant to Penal Code section 1118 on the ground there was insufficient evidence of the corpus delicti. He argued that without defendant's admission he was driving, there was no evidence someone was driving the car under the influence because any of the five people at the scene could have been the driver and the circumstances were entirely consistent with a noncriminal accident. The court denied the motion. During the hearing on the motion, defense counsel moved to exclude the declaration explaining the procedure used in taking the blood sample. The court questioned whether defendant's objection was timely, but ultimately excluded the declaration and found good cause to continue the contested hearing to allow the prosecution to subpoena the witness.

At the continued hearing, the parties informed the court they had agreed to a negotiated disposition. The district attorney agreed to amend the petition to add one count of alcohol related reckless driving in violation of Vehicle Code sections 23103 and 23103.5. In exchange for defendant's admission of that count, the remaining counts would be dismissed. Defense counsel informed the court the plea was "without prejudice" to any right he might have to appeal the denial of the Penal Code section 1118 motion. The court advised defendant of the maximum possible confinement, informed him of his *Boykin-Tahl*[2] rights, and obtained a stipulation to a factual basis for the plea. The court found the plea was freely, voluntarily, knowingly and intelligently made, and sustained the petition as amended.

At the dispositional hearing, the court adjudged defendant a ward of the court and placed him on one year's probation under standard conditions. The court also ordered defendant to complete 30 hours of voluntary service, to complete an adolescent driving-under-the-influence program, and pay a restitution fine of $10.

ANALYSIS

Counsel vigorously and competently represented defendant at all times. At the time defendant entered his change of plea, defense counsel attempted to preserve for

[2] *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

appeal the denial of the motion to dismiss. Yet, by entering a plea of no contest, defendant admitted the sufficiency of the evidence establishing the crime, and is not entitled to review of any issue that goes to the question of guilt. (*In re Uriah R.* (1999) 70 Cal.App.4th 1152, 1157 & fn. 2.)

Even if counsel mistakenly believed denial of the motion to dismiss would be preserved for appeal, that mistake would not support a claim of ineffective assistance of counsel. To establish ineffective assistance of counsel, a defendant must, among other things, establish prejudice by showing that absent counsel's error, it is reasonably probable defendant would have obtained a more favorable outcome. (*Strickland v. Washington* (1984) 466 U.S. 668, 691-692; *People v. Ledesma* (1987) 43 Cal.3d 171, 216-217; *People v. Peyton* (2009) 176 Cal.App.4th 642, 652.)

Defendant could not show prejudice here for two reasons: First, he entered a plea to a *different* offense, and the insufficiency of the evidence as to *dismissed* offenses could not result in reversal of his conviction. Second, the prosecution met its burden to prove the "the corpus delicti, or the body of the crime itself—i.e., the fact of injury, loss, or harm, and the existence of a criminal agency as its cause. In California, it has traditionally been held, the prosecution cannot satisfy this burden by relying *exclusively* upon the extrajudicial statements, confessions, or admissions of the defendant." (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1168-1169.) Here, there was substantial evidence, independent of defendant's admission that he was driving the car. This included the condition of the vehicle, defendant's proximity to it, his father's testimony that he had given defendant permission to drive the car and the fact his father went to retrieve the keys from defendant when no one else at the scene had them. The officer observed objective signs defendant was intoxicated, and defendant failed the field sobriety tests. The results of the blood test also established he was intoxicated. Since the claimed error would not, in any event, have resulted in reversal, any mistake as to whether the issue would be preserved for appeal did not result in any prejudice to defendant.

The only other issues cognizable on appeal following entry of a no contest plea relate to the denial of a motion to suppress, whether the plea was informed and

voluntarily made, and to matters arising after the plea was entered. (*In re Uriah R.*, *supra,* 70 Cal.App.4th at. p. 1157; see also § 800, subd. (a); *In re Cody S.* (2004) 121 Cal.App.4th 86, 90.) Before defendant entered the no contest plea, the court advised him of the maximum possible confinement, advised him of his *Boykin-Tahl* rights, confirmed that he understood these rights, and determined he freely and voluntarily waived them. It also obtained a stipulation to a factual basis for the plea. The disposition adjudging the minor a ward of the court and placing him on probation was consistent with the terms of the plea, and a reasonable exercise of the court's discretion.

Based upon the foregoing independent review of the record we find no arguable issues that require supplemental briefing and affirm the judgment.

CONCLUSION

The judgment is affirmed.

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Banke, J.

We concur:

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Margulies, Acting P. J.

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Dondero, J.